In the High Court of Judicature at Madras

Dated: 13.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.7021 of 1999

V.S.Parthasarathy ..Petitioner

..vs..

1. Director General,
   CISF Hqrs.,
   13, C.G.O.Complex,
   Lodhi Road,
   New Delhi-3.

2. Deputy Inspector General,
   South Zone Headquarters,
   Central Industrial Security Force,
   Rajaji Bhavan,
   Besant Nagar,
   Chennai-600 090.

3. Deputy Commandant,
   CISF Unit, M.R.L.,
   Manali, Chennai-600 068.

4. Chairman & Managing Director,
   Madras Refineries Limited,
   Anna Salai, Chennai. ..Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to pay a sum of Rs.5,00,000/- towards the compensation for the death of late Balaji Constable No.914525217 CISF due to negligent and careless attitude or provide employment to the second son of the petitioner Mr.Murali on compassionate ground.

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For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.C.Krishnan,
Senior Central Govt Standing
Counsel for R1 to R3

Mr.R.Muthukumarasamy,
Senior Counsel for
Mr.A.Jenasenan for R4

ORDER

The petitioner has filed the above writ petition to issue a Writ of Mandamus, to direct the respondents to pay a sum of Rs.5 lakhs towards compensation for the death of his son Balaji, Constable No.914525217 CISF due to negligent and careless attitude or provide employment to his second son, viz., Murali on compassionate ground.

2. According to the petitioner, his son late Balaji had served in Central Industrial Security Force (for short 'CISF') as Constable from 1991. He was transferred to CISF, M.R.L., Manali from Jaipur on the ground that he was suffering from cancer. On 29.11.1997, his son made a representation to the 3rd respondent, Deputy Commandant, CISF Unit, M.R.L., Manali, to sanction required medical treatment charges, which comes around Rs.7 lakhs for Bone Marrow Transplantation. His son again made a representation to the Chairman and Managing Director, M.R.L., Chennai, the 4th respondent herein, requesting for urgent medical treatment, enclosing a medical certificate obtained from Cancer Hospital, Adyar. The 3rd respondent forwarded the application for financial assistance submitted by his son, to the 4th respondent. Instead of taking action on the said representation, the 3rd respondent has admitted his son in an ordinary Hospital, namely, M.K.Nursing Home, Chennai on 27.04.1998 and he was discharged on 07.05.1998. The 3rd respondent would have admitted his son either in the Apollo Hospital or in the Cancer Hospital, Adyar. Thereafter, his son died on 30.05.1998. Since the death was caused due to the negligent and irresponsible attitude of the 3rd respondent, he is liable to pay compensation for the death caused to his son. The 4th respondent had also not taken due care to save his son. Therefore, for the loss of life and mental agony, the respondents have to pay compensation for a sum of Rs.5 lakhs jointly to the petitioner. After the death of his son, on 06.07.1998, the petitioner made a representation to the 4th respondent and requested a job for his second son (brother of the deceased Balaji) on compassionate grounds. On 16.07.1998, he made another representation to the 4th respondent. On 18.08.1998, the 4th respondent sent a letter, stating that due to various administrative reasons and procedures, they are not in a position to offer any employment to his second son, which necessitated the petitioner to file the above writ petition.

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3. On behalf of respondents 1 to 3, Group Commandant, CISF Headquarters, Chennai-90 has filed a counter affidavit, wherein it is stated that on arrival in CISF Unit, M.R.L., Manali, the Constable Balaji was under treatment at Cancer Institute, Adyar. The hospital authorities advised the patient to undergo Bone Marrow Transplantation, for which they have given the estimate of Rs.7 lakhs. A case was taken up with the management of M.R.L., Manali, in their letter dated 07.01.1998 as the Constable was posted to CISF Unit, Manali. The Constable also submitted an application to Director General, CISF, for financial assistance for medical treatment from Central Welfare Fund, which was forwarded to Force Headquarters. In the meanwhile, the Constable Balaji was under treatment at M.K.Nursing Home, which is an authorised hospital for M.R.L. for medical purpose. He had proceeded to his home town after discharge from hospital from 07.05.1998. He reported at the Unit on 18.05.1998 and requested the Deputy Commandant to grant him leave for 40 days to continue treatment at his home town Arakkanam. On 21.05.1998, his father informed over phone that his son was admitted in Cancer Institute at Adyar in a critical condition. As requested by the hospital authorities and the petitioner, a van was arranged on 22.05.1998 to take his son to Arakkanam, his native place. However, Constable Balaji died on 30.05.1998. Immediately, all pensionary benefits have been settled.

4. The 4th respondent-M.R.L.has filed a separate counter affidavit, stating that Constable Balaji was a permanent and whole time employee of CISF, which comes under the Ministry of Home Affairs, Government of India. The 4th respondent, which is a Government Company, has been availing the services of CISF for their security purposes in factory and other places, on payment of specified amount to the respective units. The 4th respondent has been allowing specified sums for the CISF personnel for their hospitalisation expenses towards the expenses connected for treatment of themselves and their dependants. Each one of CISF personnel, who has been working for more than six months, was allowed to such medical expenses, subject to various conditions. They also got a Health Centre in their factory, which extends medical treatment to their employees and also to the CISF personnel. The 4th respondent had identified two hospitals, namely, Rainy Hospital and M.K.Nursing Home, as authorised hospitals, in which CISF personnel can take medical treatment and hospitalisation, the expenses of which the 4th respondent can allow. Such hospitalisation expenses will be directly settled by the Company to the said authorised hospitals.

5. In November, 1997, Constable Balaji approached the Cancer Institute, Adyar, for treatment; based on which, the said Institute had addressed a letter to the Deputy Commandant, CISF, Manali, who is incharge of the Unit, which is deployed in the factory, requiring financial concurrence for medical expenses of Mr.Balaji. The said letter indicated that the patient P.Balaji requires the treatment, which would cost about Rs.12,000/- per month, besides Bone Marrow Transplantation, which would cost about Rs.7 lakhs. The letter was forwarded to the 4th respondent.

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The 4th respondent suggested that CISF should explore the possibility of assistance being a Government Organisation. Inasmuch as the deceased personnel being a full time permanent employee of CISF, which is under the control of the Ministry of Home Affairs, the claim against the 4th respondent is not maintainable and question of offering appointment to the second son of the petitioner would not arise.

6. Heard Mr.Mohammed Ibrahim Ali, learned counsel for the petitioner, Mr.C.Krishnan, learned senior counsel for respondents 1 to 3 and Mr.R.Muthukumarasamy, learned senior counsel for the 4th respondent.

7. In view of narration of the case of the petitioner and the stand taken by the respondents in the earlier paragraphs, there is no need to refer the same once again. It is the grievance of the petitioner, who is the father of Constable Balaji, that had the respondents, particularly 3rd and 4th respondents, accepted his request, within a reasonable time and allocated the required funds, as claimed by the Cancer Institute, Adyar, he could have saved his son. According to him, inasmuch as the 3rd respondent was not acted quickly and the 4th respondent has also failed to respond, all the respondents are liable to pay compensation as claimed, or in the alternative, provide employment for his second son on compassionate grounds.

8. It is seen from the materials placed that prior to posting at M.R.L., Manali, Madras, Constable Balaji was suffering from cancer even when he was working at Jaipur. No doubt, after finding that he has infected with cancer, a request was made for sanctioning of the amount, namely, Rs.12,000/- per month and Rs.7 lakhs for Bone Marrow Transplantation. The above details were furnished by Cancer Institute, Adyar. It is relevant to point out that at that time, Constable Balaji was working in the 4th respondent Company, which is also a Government Company. Mr.Muthukumarasamy, learned senior counsel appearing for the 4th respondent pointed out that as per the Health Scheme applicable to the 4th respondent, their employees as well as personnel of CISF working in 4th respondent are permitted to have treatment at Rainy Hospital and M.K.Nursing Home. In fact, at that relevant time, Constable Balaji was admitted in M.K.Nursing Home and he had treatment nearly for a period of seven days and thereafter, he left for his home town. In those circumstances, it cannot be claimed that the 4th respondent has not provided adequate medical facilities. It is brought to our notice that both the hospitals, namely, Rainy Hospital and M.K.Nursing Home are reputed hospitals, having all facilities. No doubt, the request of the petitioner and his son could not be finalised by respondents 1 to 3 within a short period. In the meanwhile, unfortunately, the petitioner's son Constable Balaji breathed his last on 30.05.1998. The particulars furnished by the 3rd respondent in the form of counter affidavit show that all efforts were taken for proper treatment to the son of the petitioner. Inasmuch as the CISF is a Government Organisation, it cannot be expected that decision would be taken within few hours or few days. On the basis

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of the particulars furnished, we are also of the view that respondents 1 to 3 cannot be blamed.

9. Coming to the alternative claim, namely, employment to the second son, Mr.C.Krishnan, learned counsel for respondents 1 to 3 fairly stated that there is no provision / rule enabling compassionate appointment in their Force. Mr.Muthukumarasamy, learned senior counsel for 4th respondent submitted that inasmuch as the deceased Balaji was not a workman or personnel under the 4th respondent, they are not in a position to accede to their request of the petitioner. Further, even in respect of claim against respondents 1 to 3, learned counsel Mr.C.Krishnan pointed out that the appropriate authority to consider the claim is the Government of India, which is not a party in this proceedings.

10. Considering all these aspects and inasmuch as considering the fact that the unfortunate death occurred nine years ago, even a direction cannot be issued for compassionate appointment at this juncture. However, irrespective of our conclusion, petitioner is free to make a representation to the Ministry of Home Affairs, Government of India, highlighting his grievance. If the same is permissible, it is for the Government of India to consider the same in accordance with law.

With the above observation, the writ petition is dismissed. No costs.

gl

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Director General,
   CISF Hqrs.,
   13, C.G.O.Complex,
   Lodhi Road,
   New Delhi-3.

2. The Deputy Inspector General,
   South Zone Headquarters,
   Central Industrial Security Force,
   Rajaji Bhavan,
   Besant Nagar,
   Chennai-600 090.

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3. The Deputy Commandant,
   CISF Unit, M.R.L.,
   Manali, Chennai-600 068.

+ One cc to Mr. C. Krishnan ACGSC SR 61728
+ One cc to Mr. M.Md Ibrahim Ali Advocate SR 61891
+ One cc to Mr. A. Jenasenan Advocate SR 61948

NTK (co)
sg 29/12/06

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